

Court of Appeals, State of Michigan

ORDER

Nancy Anne Hook v The Great Atlantic & Pacific Tea Co Inc

Docket No. 287363

LC No. 07-717474-CZ

Karen M. Fort Hood
Presiding Judge

Kurtis T. Wilder

Christopher M. Murray
Judges

In lieu of granting leave to appeal, pursuant to MCR 7.205(D)(2), the Court orders that the August 7, 2008, order denying defendants' motion for summary disposition is REVERSED. The trial court erred in denying defendants' motion with respect to MCL 600.2917(1), which precludes a person from recovering damages for mental anguish, or punitive and exemplary damages for false imprisonment, libel or slander, if the merchant had probable cause for believing that the person committed a larceny, unless the merchant used unreasonable force, detained the person for an unreasonable amount of time or acted with intent to injure. First, the court erred in stating there was a question of fact whether plaintiff placed a magnifying glass in her purse since plaintiff did not support this factual assertion by any testimonial evidence. MCR 2.116(G)(4). Second, there is no genuine issue of material fact that plaintiff placed a store item, Mucinex D, in her purse and failed to pay for it before attempting to leave the store and was stopped by defendant Ahmed Saleh. Defendants' employees sworn testimony was that plaintiff admitted in the store office that she placed the item in her purse and did not pay for the item. Therefore, Saleh had a reasonable suspicion that plaintiff committed a larceny. Third, there is no genuine issue of material fact that defendant's employees did not (1) use unreasonable force, (2) detain plaintiff for an unreasonable length of time, (3) acted with unreasonable disregard of her rights or sensibilities, or (4) acted with intent to injure plaintiff. Consequently, the trial court should have dismissed plaintiffs' claims for any mental anguish, punitive and exemplary damages, as they are barred by statute. MCL 600.2917(1). However, the statute is not absolute and a plaintiff may recover only nominal damages if she can otherwise prove her tort claims. See *Tumbarella v Kroger Co*, 85 Mich App 482, 491; 271 NW2d 284 (1978). Because defendants failed to provide a copy of the complaint or challenge the elements of each tort claim pled by plaintiff, this Court cannot conduct any further review. We REMAND to the trial court for further consideration not inconsistent with this order.

Finally, there is no genuine issue of material fact that defendants' actions were not "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community." *Lewis v LeGrow*, 258 Mich App 175, 196-198; 670 NW2d 675 (2003). Accordingly, the trial court erred in failing to dismiss plaintiff's claim for intentional infliction of emotional distress.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JAN 07 2009

Date

Sandra Schultz Mengel
Chief Clerk